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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 34/2017, CM APPL.1700/2017
ITA 35/2017, CM APPL.1701/2017
ITA 36/2017, CM APPL.1702/2017
ITA 37/2017, CM APPL.1703/2017
ITA 38/2017

THE PR. COMMISSIONER OF INCOME TAX-4 ..... Appellant
Through: Mr. Ruchir Bhatia, Sr. Standing Counsel.

versus

INDIAN RAILWAY CONST. CO. LTD. ..... Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **28.03.2017**

The Revenue is aggrieved by the ITAT's decision which remitted the matter to the Assessing Officer to consider the relevant facts for the periods in question and render specific findings having regard to the objective material as to the proportion, if any, of manufacturing and construction undertaken by the assessee, as a part of its track laying and construction activities for which it claimed the benefit of Section 80HH of the Income Tax Act, 1961.

Counsel for the Revenue endeavoured to submit that the ITAT's decision was not justified and that the previous order of this Court had merely directed it to render specific findings on the aspect. The ITAT's relevant observations on this aspect are as follows: -

"18. XXXXXXX
We are not agree with the contention of the Ld. CIT (A) and

subsequently raised by Ld. CIT (DR) that there might be a minor activity of manufacture of articles buy the purpose of the activity is to complete the main project of laying railways track/line as when the provisions of the Act mandates that the assessee is eligible for deduction pertains to income accrued from manufacturing activities then in our considered view, the manufacturing activity was an integral part of entire activity and namely for the reason that such an activity was not very significant compared to total turnover of the assessee it could not be said the assessee not engaged in manufacturing activity. In the provision of 80HH of the Act, as noted above, it is mandated that where the total gross income of an assessee includes any profits and gains derived from an industrial undertaking then this section of deduction applies. In the present case also the gross total income of the assessee includes income from manufacturing activity of an industrial undertaking irrespective of the fact that the activities is being carried out either at small scales or large scale and such activity was significant or not compared total turnover of the assessee including income of the business which is not eligible for such deduction.

19. In view of above we hold that the assessee is eligible for deduction u/s 80HH of the Act on the income from manufacturing activity. We may point out that the Ld. Counsel for the assessee fairly accepted that the assessee has not maintained separate book of accounts for construction and manufacturing activities hence these details have not been placed on record. He further submitted that if opportunity is allowed then the calculation in regard to income from manufacturing activities may be placed before the competent authority to discharge onus cast upon the assessee to substantiate its claim of deduction. The Ld. CIT (DR) has objected to above submissions of assessee by contending that when there is not separate accounts then and details and amount of income from small and insignificant manufacturing are not on record then it would be futile exercise to grant an opportunity to assessee to submit the same at this belated stage hence, claim of the assessee should be dismissed.

20. On careful consideration above it was the duty and onus on the shoulder of the assessee to show that he was also engaged in manufacturing activities and the gross total income declared by it

> *also include income from manufacturing activity and on the basis of foregoing discussion we have held that the assessee is entitled for deduction u/s 80HH and 80I of the Act on the part of income earned from manufacturing activities. However, for want of adequate material on the record of the Tribunal, it is not possible for us to calculate quantum of deduction and thus we find it appropriate to send the issue for limited purposes i.e. for calculation of deduction u/s 80HH on the income earned from manufacturing activities during the relevant periods under consideration for all five assessment years. Hence, we direct the AO to calculate the quantum of deduction for all the five assessment years under consideration."*

This Court is of the opinion that the pointed and specific nature of the directions of the ITAT was sufficient to allay any doubt of the Revenue as to the nature of the remit which the Assessing Officer is expected to address himself to. In the circumstances, no substantial question of law arises; the appeals are consequently dismissed along with pending applications.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

MARCH 28, 2017
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